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685

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PART IV.

Section—1-B.

CENTRAL ACTS AND ORDINANCES AND ORDERS UNDER THE CONSTITUTION BY THE PRBSIDENT.

NOTIFICATION.

No. L.D 1534—Legis 4-51-63, dated Bangalore, 13th November 1951.

Ordered that the State Financial Corporations Act, 1951 (Central Act No. LXIII of 1951), published in the *Gazette of India*, Part II, Section 1, dated the 1st November 1951 be republished in the *Mysore Gazette* for general information.

By Order of His Highness the Maharaja.

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

GOVERNMENT OF INDIA686

MINISTRY OF LAW.

Received Assent on 31st October 1951.

THE STATE FINANCIAL CORPORATIONS BILL, 1951.
(LXIII of 1951).

AN

ACT

to provide for the establishment of State Financial Corporations.

BE it enacted by Parliament as follows :—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the State Financial Corporations Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in any State on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Board" means the Board of Directors of the Financial Corporation.

(*b*) "Financial Corporation" means the Financial Corporation established for the State under section 3 ;

(*c*) "industrial concern" means any concern engaged in the manufacture, preservation or processing of goods or in mining or in the generation or distribution of electricity or any other form of power ;

(*d*) "prescribed" means prescribed by rules or regulations made under this Act ;

(*e*) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (II of 1934) ;

(*f*) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934) ;

(*g*) "underwriting" means contract with or without conditions, to subscribe for stocks, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part thereof.

CHAPTER II 687

INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT.

3. *Establishment of State Financial Corporations.*—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

(2) The Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and to hold property and shall by the said name sue and be sued.

4. *Share capital and shareholders.*—(1) The authorised capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall in no case less than fifty lakhs of rupees or exceed five crores of rupees.

(2) The authorised capital shall be divided into such number of fully paid-up shares as the State Government may determine and shall be issued to the parties mentioned in sub-section (3) at such times and in such manner as that Government may determine and each such share shall have the same face value.

(3) The State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among—

(*a*) the State Government,

(*b*) the Reserve Bank,

(*c*) scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions, and

(*d*) parties other than those referred to in clauses (*a*), (*b*) and (*c*):

Provided that the number of shares which may be allocated to the parties referred to in clause (*d*) shall in no case exceed twenty-five per cent of the total number of shares.

(4) Subject to the other provisions contained in this section, the allocation of shares among the parties referred to in clauses (*c*) and (*d*) of sub-section (3) and the allotment of such shares shall be made by the Financial Corporation in such manner as may be prescribed.

(5) If any shares allocated to any of the parties referred to in clauses (*c*) and (*d*) of sub-section (3) remain unsubscribed, they shall be subscribed for by the State Government, but the State Government may at any time thereafter dispose of the shares so subscribed for to any party who was eligible to subscribe for it in the first instance.

5. *Restrictions on transfer of shares.*—(1) The shares of the Financial Corporation shall not be transferable except to the State Government, the Reserve Bank or any other financial institution recognised in this behalf by the State Government:

Provided that the shares subscribed for by the parties referred to in clause (*d*) of sub-section (3) of section 4 shall be freely transferable.

(2) Nothing contained in this section shall affect the provisions of sub-section (5) of section 4.

6. *Shares to be guaranteed by the State Government and to be trust or approved securities.*—(1) The shares of the Financial Corporation shall be guaranteed by the State Government as to the repayment of principal and the payment of annual

dividend at such minimum rate as the State Government may, with the approval of the Central Government, fix by notification published in the Official Gazette at the time of issuing the shares.

(2) Notwithstanding anything contained in the Act hereinafter mentioned in this sub-section, the shares of the Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 (II of 1882) and also to be approved securities for the purposes of the Insurance Act, 1938 (IV of 1938) and the Banking Companies Act, 1949 (X of 1949).

7. *Additional capital of the Financial Corporation.*—(1) The Financial Corporation may, in consultation with the Reserve Bank, issue and sell bonds and debentures carrying interest for the purpose of increasing it working capital :

Provided that the total amount of bonds and debentures issued and outstanding and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed five times the amount of the paid-up share capital and the reserve fund of the Financial Corporation.

(2) Bonds and debentures of the Financial Corporation shall be guaranteed by the State Government as to the repayment of the principal and the payment of interest at such rate as the State Government may, on the recommendation of the Board and with the approval of the Central Government, fix at the time the bonds and debentures are issued.

8. *Deposits with the Financial Corporation.*—The Financial Corporation may accept deposits from the public repayable after the expiry of a period which shall not be less than five years from the date of the making of the deposit, and on such other terms as it thinks fit :

Provided that the total amount of such deposits shall not at any time exceed the paid-up capital of the Financial Corporation.

9. *Management of Financial Corporations.*—The general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in a Board of Directors which, with the assistance of an Executive Committee and a Managing Director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation.

10. *Board of Directors.*—The Board of Directors shall consist of the following, namely :—

(*a*) three directors nominated by the State Government ;

(*b*) one director nominated by the Central Board of the Reserve Bank ;

(*c*) one director nominated by the Board of Directors of the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948) ;

(*d*) three directors elected in the prescribed manner from among themselves by the parties referred to in clause (*c*) of sub-section (3) of section 4, one of whom shall be elected to represent scheduled banks, another to represent Co-operative banks and the third to represent the remaining financial institutions ;

(*e*) one director elected in the prescribed manner from among themselves by the parties referred to in clause (*d*) of sub-section (3) of section 4 who are shareholders of the Financial Corporation ;

(*f*) one managing director appointed by the State Government, in consultation with the Board except in the case of the first appointment :

Provided that on the first constitution of the Board the directors referred to in clauses (*d*) and (*e*) shall be nominated by the State Government and the directors so nominated shall, for the purposes of this Act, be deemed to be elected directors :

Provided further that all directors of the Board first constituted other than the managing director shall retire at the end of the first year.

689

11. *Term of office and retirement of directors.*—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first proviso to section 10 shall hold office for four years:

Provided that two out of the four directors so elected shall retire at the end of two years after the first election and the other two at the end of four years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in sub-section (2), an elected director shall continue in office until his successor is elected and shall also be eligible for re-election for not more than two full consecutive terms after the rotation of elected directors has begun.

12. *Disqualifications for being a director.*—No person shall be a director who—

(*a*) except in the case of a managing director, is a salaried official of the Financial Corporation; or

(*b*) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or

(*c*) is found to be a lunatic or becomes of unsound mind; or

(*d*) is or has been convicted of any offence involving moral turpitude.

13. *Removal of director from office.*—The State Government may remove from office any director who—

(*a*) is, or has become, subject to any of the disqualifications mentioned in section 12; or

(*b*) without excuse sufficient in the opinion of the State Government to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board.

14. *Resignation of office by director and filling up of casual vacancies.*—(1) The managing director or any other director may resign his office giving notice thereof in writing to the State Government and on such resignation being accepted, shall be deemed to have vacated his office.

(2) A causual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board.

15. *Chairman of the Board.*—(1) The Chairman of the Board shall be one of the directors, not being the managing director, nominated by the State Government, after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board:

Provided that the nomination of the Chairman for any period other than the first period shall be made only after the vacancies in the office of directors occurring by efflux of time in that period have been filled by nomination or election as the case may be.

(2) The Chairman shall hold office for two years or until his successor is nominated:

Provided that a Chairman shall so long as he remains a director be eligible for re-nomination as Chairman.

16. *Remuneration of directors.*—The directors other than the managing director and not being servants of the State Government shall be paid such fees for attending meetings of the Board and if they are members thereof, of the Executive Committee, as may be prescribed.

17. *Managing director.*—The managing director shall—

(*a*) be a whole time officer of the Financial Corporation;

(*b*) perform such duties as the Board may, by regulations, entrust or delegate to him;

690

(*c*) hold office for four years and be eligible for reappointment ;

(*d*) receive such salary and allowances as the Board, with the previous approval of the State Government, may determine :

Provided that the first managing director shall hold office for such term and shall receive such salary and allowances as the State Government may fix.

18. *Executive Committee.*—(*1*) The Executive Committee shall consist of the managing director who shall be the Chairman of the Committee, and three other directors, chosen as follows :—

(*a*) two directors elected by the nominated directors, one from among the directors nominated by the State Government, and one from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948) ;

(*b*) one director elected by the elected directors.

(2) A director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as director.

19. *Meetings of the Board and Committee.* -(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested.

(4) If, for any reason, the Chairman is unable to be present at a meeting—

(*a*) of the Board, a director other than the managing director, authorised by the Chairman in writing in this behalf, shall preside at that meeting, or

(*b*) of the Executive Committee, a member authorised in writing by the managing director shall preside at that meeting.

20. *Powers of Executive Committee.*—(1) Subject to such general or special direction as the Board may, from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee shall be laid before the Board at the next following meeting of the Board.

21. *Advisory Committee.*—The Financial Corporation may appoint one or more advisory committee or committees for the purpose of assisting the Financial Corporation in the efficient disharge of its functions and in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of, particular areas or industries.

22. *Offices and agencies.*—The Financial Corporation shall establish its head office at such place in the State as the State Government may specify and may, with the previous sanction of the State Government, establish offices or agencies in any other place in the State.

23. *Officers and other employees of the Corporation.*—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

CHAPTER III.

Powers and duties of the Board.

24. *General duty of the Board.*—The Board in discharging its functions undes this Act shall act on business principles, due regard being had by it to the interestr of industry, commerce and the general public.

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25. *Business which Financial Corporations may transact.*—(1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely :—

(*a*) the guaranteeing on such terms and conditions as may be agreed upon of loans raised by industrial concerns which are repayable within a period not exceeding twenty years and are floated in the public market;

(*b*) the underwriting of the issue of stocks, shares, bonds or debentures by industrial concerns ;

(*c*) the receipt in consideration of the services mentioned in clauses (*a*) and (*b*) of such commission as may be agreed upon ;

(*d*) the retention as part of its assets of any stocks, shares, bonds or debentures which it may have to take up in fulfilment of its underwriting liabilites, provided that it disposes of the stocks, shares, bonds or debentures so acquired as early as practicable and in any case within a period of seven years from the date of such acquisition ;

(*e*) the granting of loans or advances to, or the subscribing to debentures of industrial concerns, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to as the case may be ; and

(*f*) generally, the doing of all such acts and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under clauses (*a*) and (*e*) of sub-section (1), unless it is sufficiently secured by a pledge, mortgage, hypothecation or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets in the manner prescribed by regulations.

26. *Limit of accommodation.*—The Financial Corporation shall not enter into any arrangement under clauses (*a*) and (*e*) of sub-section (1) of section 25 with a single industrial concern for an amount equivalent in the aggregate to more than ten per cent of the paid-up share capital of the Corporation, but in no case exceeding ten lakhs of rupees.

27. *Power to impose conditions for accommodation.*—(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed under sub-section (1) is that a director shall be appointed by the Financial Corporation on the board of directors of the industrial concern to protect the interests of the Financial Corporation, such condition shall be a valid condition notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force or in any instrument relating to the industrial concern.

28. *Prohibited business.*—The Financial Corporation shall not—

(*a*) accept deposits, except as provided by this Act ;

(*b*) subscribe directly to the shares or stock of any company ;

Provided that nothing in clause (*b*) shall affect the right of the Financial Corporation to acquire any shares, bonds or debentures of a company in fulfilment of any underwriting agreement entered into by the Finance Corporation ;

(*c*) grant any loan or advance on the security of its own shares.

29. *Rights of Financial Corporation in case of default.*—Where any industrial concern, which is under a liability to the Financial Corporation under an agreement makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management of the industrial concern, as well as the right to sell and realise

692

the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers of sale and realisation under, sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any property is sold or realised by the Financial Corporation under the provisions of this section, the money which is received by it from such sale or realisation shall, in the absence of any contract to the contrary, be held by the fiinancial Corporation in trust to be applied, first, in payment of all costs, charges and expenses properly incurred by it as incident to the said sale or realisation and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person, entitled thereto.

(5) Where the Financial Corporation takes over the management of an iudustrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the owner of the concern.

30. *Power to call for repayment before agreed period.*—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to wihch it has granted any loan or advance to disharge forthwith in full its liabilities to the Financial Corporation,—

(*a*) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance ; or

(*b*) if the industrial concern has failed to comply with the terms of its contract with the Fianancial Corporation in the matter of the loan or advance, or

(*c*) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof ; or

(*d*) if the property pledged, mortgaged hypothecated, or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given ; or

(*e*) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced ; or

(*f*) if for any reason it is necessary to protect the interests of the Financial Corporation.

31. *Special provisions for enforcement of claims by Financial Corporation.*—(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the

limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely :—

(*a*) for an order for the sale of property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance ; or

(*b*) for transferring the management of the Industrial concern to the Financial Corporation ; or

(*c*) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

32. *Procedure of district judge in respect of applications under section* 31.—(1) When the application is for the reliefs mentioned in clauses (*a*) and (*c*) of sub-section (1) of section 31, the district judge shall pass on *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold, realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) When the application is for the relief mentioned in clause (*b*) of sub-section (1) of section 31, the district judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the managment of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908), in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

(*a*) confirm the order of attachment and direct the sale of the attached property ;

(*b*) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property ;

(*c*) release the property from attachment ;

(*d*) confirm or dissolve the injunction ; or

(*e*) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf :

Provided that when making an order under clause (*c*), the district judge may make such further orders as he thinks necessary to protect the interests of the

Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit :

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or if an appeal is preferred, unless the High Court otherwise directs, until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

(9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 81, nothing in this section shall be construed as giving to the Financial Corporatian any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) The functions of a district judge under this section shall, in a presidency-town, be exercised by the principal judge of the City civil court, if any, having jurisdiction or by the High Court.

CHAPTER IV

Investment of Funds, Accounts and Audit

33. *Funds of the Financial Corporation.*—(1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank or with any agency of the Reserve Bank other than a Government treasury or to a scheduled bank in consultation with the Reserve Bank.

34. *Investment of funds.*—The Financial Corporation may invest its funds in the securities of the Central Government or of any State Government.

35. *Disposal of profits.*—(1) The Financial Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend:

Provided that for so long as the reserve fund is less than the paid-up share capital of the Financial Corporation and until there has been repaid to the State Government such sum, if any, as that Government may have paid under guarantee given in pursuance of section 6, or under any guarantee given in pursuance of sub-section (2) of section 7, the rate of such dividend shall not exceed the rate guaranteed by the State Government under section 6.

(3) Notwithstanding anything contained in this section, no dividend paid under this section shall under any circumstances exceed the rate of five per cent per annum and if, in respect of any financial year after the reserve fund becomes equal to the share capital of the Financial Corporation, there is a surplus in the net profits after declaring a dividend at the rate specified in this sub-section, such surplus shall be paid to the State Government.

36. *General meetings.*—(1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State where there is an office of the Financial Corporation within two months from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Financial Corporation throughout the year and the auditor's report on the annual balance-sheet and accounts.

37. *Audit.*—(1) The affairs of the Financial Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (1) of section 144 of the Indian Companies Act, 1913 (VII of 1913), one of whom shall be appointed by the State Government in consultation with the Comptroller and Auditor-General of India and the other elected in the prescribed manner by the parties mentioned in clauses (*c*) and (*d*) of sub-section (3) of section 4, and such remuneration as the State Government may fix shall be paid to the auditors by the Financial Corporation.

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case they had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may, in consultation with the Comptroller and Auditor-General of India, at any time issue directions to the auditiors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion public interest so requires.

(5) The Financial Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the shareholders.

(6) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from a State Government, undertake such audit and at such times as he may consider necessary:

Provided that where the State Government is required to make any payment on account of the guarantee given by it under seetion 6 or sub-section (2) of section 7, as the case may be, such audit shall be undertaken by the Comptroller and Auditor-General of India.

(7) Every audit report under sub-section (6) shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

38. *Returns.*—(1) The Financial Corporation shall furnish a statement, in the prescribed form, of its assets and liabilities as at the close of business on the last

696

Friday of each month or, if that day is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), as at the close of business on the preceding working day to the State Government and to the Reserve Bank within ten days from the date to which the statement relates.

(2) The Financial Corporation shall furnish in the prescribed form to the State Government and to the Reserve Bank once in every three months or, as frequently as the State Government or the Reserve Bank may require a statement showing the classification of its loans and investments and of all loans guaranteed by it and underwriting agreements entered into by it.

(3) The Financial Corporation shall furnish to the State Government and to the Reserve Bank within three months of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, the auditors' report and a report of the working of the Financial Corporation during the year and copies of the said statement, account and reports shall be published in the Official Gazette and shall also be laid before the Legislature of the State.

CHAPTER V

MISCELLANEOUS

39. *Power to give instructions to Financial Corporation on questions of policy.*—(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court.

40. *Declaration of fidelity and secrecy.*—Every director, auditor, officer or other employee of the Financial Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

41. *Indemnity of directors.*—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by the wrongful act of any person under obligation to the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

42. *Offences.*—(1) Whoever, in any bill of lading, wherehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extent to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

697

(3) No court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorised by the Board in this behalf.

43. *Provisions relating to income-tax and super-tax.*—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Financial Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains :

Provided that any sum paid by the State Government under the guarantee given in pursuance of section 6 or under any guarantee given in pursuance of sub-section (2) of section 7 shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures or bonds paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it :

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be its income from "interest on securities" declared to be income-tax free within the meaning of section 8 of that Act.

44. *Act XVIII of 1891 to apply to the books of the Financial Corporation.*—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers Books Evidence Act, 1891 (XVIII of 1891).

45. *Liquidation of Financial Corporation.*—No provision of law relating to the winding-up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct.

46. *Power to apply Act to certain financial institutions in existence at commencement of Act.*—(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act, shall become applicable thereto according to the tenor of the notification.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

47. *Power of State Government to make rules.*—The State Government may make rules not inconsistent with the provisions of this Act to give effect to the provisions of this Act and in particular, such rules may provide for the limitation on the voting rights of a shareholder and the manner in which such voting rights may be exercised and where there is any inconsistency between the rules and the regulations made under this Act, the rules shall prevail.

48. *Power of Board to make regulations.*—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections ;

(*b*) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made ;

(*c*) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders ;

(*d*) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised ;

(*e*) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat ;

(*f*) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation ;

(*g*) the conditions which the Financial Corporation may impose in granting loans or advances ;

(*h*) the manner of determining the sufficiency of the security taken under sub-section (2) of section 25 ;

(*i*) the forms of returns and statements required under this Act ;

(*j*) the duties and conduct of officers, other employees, advisers and agents of the Financial Corporation ;

(*k*) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation ;

(*l*) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation ;

(*m*) the appointment of advisory committees for technical and other advice for the purposes of this Act ; and

(*n*) generally, the efficient conduct of the affairs of the Financial Corporation.

(3) All regulations made under this section shall be published in the Official Gazette and shall come into force on such publication.

THE SCHEDULE

(*See* section 40)

Declaration of Fidelity and Secrecy

I....., do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books are documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

Signature

Signed before me :

K. V. K. SUNDARAM,
Secretary to the Government of India